

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

United States of America,)	CRIMINAL NO. 3:11-2333-CMC
)	
v.)	OPINION and ORDER
)	
Contaurus Dermont Smith,)	
)	
Defendant.)	
_____)	

Defendant seeks relief in this court pursuant to 28 U.S.C. § 2255. Defendant raises a single claim relating to potential relief under *United States v. Hemingway*, 734 F.3d 323 (4th Cir. 2013). The Government filed a motion for summary judgment, arguing that Defendant's motion is untimely; that equitable tolling is not applicable to Defendant's motion; that Defendant's claim is not cognizable under 28 U.S.C. § 2255; that Defendant's claim is procedurally defaulted; and that even if timely and cognizable, Defendant's claim is barred pursuant to the recent Fourth Circuit decision in *United States v. Chisolm*, 579 F. App'x 187 (4th Cir. 2014) (unpublished). Defendant has not responded to the Government's motion and the time for doing so has expired.

The court has reviewed the complete record in this case. In light of the Government's arguments relating to timeliness and the recent Fourth Circuit decisions in *Chisolm* and *United States v. Whiteside*, ___ F.3d ___, 2014 WL 7245453 (4th Cir. Dec. 19, 2014), the court finds the Government is entitled to summary judgment. Defendant has made no argument regarding the timeliness of his motion under either 28 U.S.C. § 2255(f)(3) or (f)(4), nor has he presented grounds for this court to apply equitable tolling.

Accordingly, the Government's motion for summary judgment is **granted**. The motion under 28 U.S.C. § 2255 is *dismissed with prejudice*.

CERTIFICATE OF APPEALABILITY

The governing law provides that:

(c)(2) A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.

(c)(3) The certificate of appealability . . . shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c). A prisoner satisfies this standard by demonstrating that reasonable jurists would find this court's assessment of his constitutional claims is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. *See Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001). In this case, the legal standard for the issuance of a certificate of appealability has not been met. Therefore, a certificate of appealability is **denied**.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
SENIOR UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
January 5, 2015